

May 3, 2011

Shani Kleinhaus  
Environmental Advocate  
Santa Clara Valley Audubon Society  
22221 McClellan Road  
Cupertino, CA 95014

**SUBJECT: COMMENTS ON MITIGATED NEGATIVE DECLARATION FOR NORTECH EAST LOOP WATER MAIN PUBLIC PROJECT, FILE NO. PP10-178**

Dear Ms. Kleinhaus:

Thank you for your comments on the Mitigated Negative Declaration (MND) prepared for the Nortech East Loop Water Main project. The City of San Jose is providing the following information in response to your comment letter received on April 18, 2011.

**1. Purpose of the Project**

**COMMENT:**

The purpose of the Project is not clearly stated in the Public Notice and the MND. CEQA requires that a Project should have a defined purpose. At this point, the closest language to a project purpose is, "The project will complete a looped system and increase service reliability to the Alviso service area." (Initial Study, page 6)

We ask that the City elaborate on this sketchy project purpose statement. For example, are there problems with service reliability in the Alviso service area that this project would fix? Please state what specifically those problems are and how this project would fix those problems. Also, would this project allow for increased water service in the service area if increased development occurred in the area?

We believe that this project may have significant growth-inducing impacts, in that its construction would supply potable water to future development projects on the Water Pollution Control Plant (WPCP) buffer land; land that is not currently developed. By facilitating the development of commercial uses on the buffer lands, the project would have significant Land Use and Planning impacts and significant impacts on Utility and Service Systems.

We ask that this project be evaluated as a part of the Environmental Impact Report for the Plant Master Plan, and not be segregated and put in place in a way that may facilitate the approval of the Recommended Alternative for the Plant Master Plan. We believe that the MND, as proposed, constitutes "piecemealing" of environmental review, a practice prohibited by CEQA.

RESPONSE:

The purpose of this project is to improve the water reliability to existing residences and businesses in the Alviso service area and to provide existing residences and businesses south of Highway 237 with additional water storage capacity and fire protection. This project will provide an additional connection between the main water source south of Highway 237 and the storage facility and fire/emergency pump station located north of Highway 237. This connection will ensure that during an emergency, existing residences and businesses in the Alviso service area will continue to have water, and that existing residences and businesses south of highway 237 will benefit from water storage capacity and fire protection. Also, this project will increase water circulation in the storage facility, reduce water age, and prevent adverse impacts to water quality.

This project will not have a growth inducing impact, as it will not result in or allow more service hookups than what can already be provided within the current system capacity. It merely provides redundancy between both sides of highway 237 to ensure reliability and maintain water quality.

This project is in no way connected to and is not a part of any possible development as a result of the Plant Master Plan project. Additional hydraulic and water supply analysis will be required as part of a separate Plant Master Plan environmental review process prior to any development approvals resulting from the Plant Master Plan.

**2. Impacts to Burrowing Owls and their Habitat**

COMMENT:

The Recommended Alternative for the Plant Master Plan designates the entire Project site "burrowing owl habitat". Thus, we believe this project would have significant Biological Impacts if any owl were displaced, relocated, or harassed. Again, we ask that the project impacts be evaluated within the framework of the Plant Master Plan for cumulative impacts and to coordinate the scope of this project with the overall Master Plan effort.

A 30-day survey for nesting burrowing owls is inadequate as mitigation, since burrowing owls may occupy a burrow and start nesting anytime. No more than 2 days should pass between a nesting owl survey and start of construction (David Johnston, Department of Fish and Game, personal Communication). We ask that to minimize impacts on nesting burrowing owls, construction should not be allowed to occur during the typical avian nesting season (February 1-August 31). This project could simply be completed outside the nesting period window. We suggest the following mitigation measure: "no construction will occur during the typical burrowing owl nesting season (February 1 – August 31)."

RESPONSE:

The Initial Study acknowledged that the installation of the proposed water main pipeline could result in impacts to individual owls or abandonment of an active burrowing owl nest which could result in the loss of eggs or young. Therefore, mitigation measures were included to reduce these potential impacts to a less than significant level.

The mitigation measure requiring Burrowing Owl surveys within 30 days of the start of construction was based on the *California Burrowing Owl Consortium, Burrowing Owl Survey Protocol and Mitigation Guidelines*. It



should be noted that while the surveys are to occur within 30 days prior to construction activities, the final site visit takes place no more than 14 days prior to the start of construction/installation to determine the presence or absence of burrowing owls on the site and all areas within 250 feet of the site. The Draft Initial Study/Mitigated Negative Declaration was provided to the California Department of Fish & Game (CDFG) for review and comment. The CDFG had no comments on the Initial Study/MND or on the proposed mitigation measures.

The proposed mitigation will protect burrowing owls both within and outside the nesting season. As stated in the mitigation measure, if owls are present on the site (from February 1<sup>st</sup> – August 31<sup>st</sup>), or as otherwise determined by surveys and monitoring, no installation activities or other activities that result in substantially more noise, vibration, or human activity than is currently present on the site would occur within 250 feet of the burrow until the nest is no longer active. In addition, a mitigation program will be developed in conformance with the requirements of the CDFG and the U.S. Wildlife Service if owls are found to be present. Therefore, the project will not result in a significant project or cumulative impact on Burrowing Owls.

### **Conclusion**

#### **COMMENT:**

Let me reiterate that, given the lack of information as to the project purpose in the MND and IS, it appears that this project undermines CEQA in the areas of a clearly defined project purpose, adequacy of impacts and mitigations, cumulative impacts, and growth inducement. We ask that the City not go forward with this project as proposed until these issues are addressed.

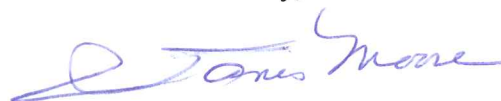
Thank you for the opportunity to comment on the proposed project and for granting SCVAS an extension (until April 18th) for commenting. We ask that you keep us informed on the planned project approval timeline and process, including but not limited to all hearings and decisionmaking schedules. Please keep SCVAS on the notification list for the proposed project site.

#### **RESPONSE:**

Refer to previous responses to comments.

As described above, the comments provided in this letter do not identify any new significant environmental impacts or identify new or additional mitigation measures necessary to avoid significant environmental impacts. Please feel free to contact me at [janis.moore@sanjoseca.org](mailto:janis.moore@sanjoseca.org) if you have any questions or comments.

Sincerely,



Janis Moore  
Planner II